

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRIAN R. LOCKE,

Plaintiff,

v.

BRETT VANDEWALLE,

Defendants.

ORDER

14-cv-786-wmc

Plaintiff Brian R. Locke is a state inmate incarcerated by the Wisconsin Department of Corrections at the Green Bay Correctional Institution. Locke has filed this proposed civil action pursuant to 42 U.S.C. § 1983, alleging that a correctional officer (Lieutenant Brett Vandewalle) used excessive force against him in 2010. Locke requests leave to proceed with his complaint without prepayment of the filing fee. For reasons set forth briefly below, that request will be denied and this case will be dismissed.

Because he is incarcerated, Locke's complaint is governed by the Prison Litigation Reform Act (the "PLRA"), which imposes certain conditions on the privilege of proceeding *in forma pauperis*. In particular, under the "three-strikes rule" found at 28 U.S.C. § 1915(g), a prisoner is not allowed to bring a civil action *in forma pauperis* in federal court if, while imprisoned, three or more of his civil actions or appeals have been dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted.

Court records confirm that, while imprisoned, Locke has filed at least three previous civil actions that were dismissed as frivolous or for failure to state a claim: (1) *Locke v. Meriter Hospital et al.*, 04-cv-614-jcs (W.D. Wis. Aug. 27, 2004) (failure to state a claim); (2) *Locke v. Meriter Hospital et al.*, 04-cv-688-jcs (W.D. Wis. Sept. 21, 2004) (failure to state a claim); and

(3) *Locke v. Chiarkas*, 05-cv-408-jps (E.D. Wis. Oct. 25, 2005) (failure to state a claim). Because Locke has at least three strikes against him, he may not proceed *in forma pauperis* unless the pleadings show that he is in imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

Here, Locke's sole claim concerns an incident that occurred in August 2010, in which the defendant allegedly used excessive force against him. In order to meet the imminent danger requirement of 28 U.S.C. § 1915(g), the "threat or prison condition [must be] real and proximate." *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003) (citing *Lewis v. Sullivan*, 279 F.3d 526, 529 (7th Cir. 2002)). Allegations of past harm do not suffice; the harm must be imminent or occurring at the time the complaint is filed. *Ciarpaglini*, 352 F.3d at 330 (citing *Heimermann v. Litscher*, 337 F.3d 781 (7th Cir. 2003)). Locke's allegations, which are remote in time, do not establish that physical harm is imminent. It follows that Locke does not satisfy the exception found in § 1915(g) and that he is barred from proceeding without prepayment of the full filing fee in this case.

Ordinarily, the court would grant Locke an opportunity to pay the filing fee. This case, however, stems from an incident that allegedly occurred in Green Bay. As a result, this case should have been brought in the United States District Court for the Eastern District of Wisconsin, *see* 28 U.S.C. §§ 130(a), 1391(b), where the Green Bay Correctional Institution is located. Accordingly, the court will deny leave to proceed and dismiss the complaint without prejudice to re-filing in the proper district along with the full amount of the filing fee.

ORDER

IT IS ORDERED that Brian R. Locke's motion for leave to proceed (dkt. # 3) is DENIED pursuant to 28 U.S.C. § 1915(g) and this case is DISMISSED without prejudice to re-filing in the proper district along with the full amount of the filing fee.

Entered this 17th day of November, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge